

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Case No. CR10-0244 EMC

Plaintiff,

v.

**FIRST AMENDED PRETRIAL ORDER
FOR CRIMINAL JURY TRIAL AND
BRIEFING SCHEDULE**

MICHAEL ANTHONY NELSON,

Defendant.

Good cause appearing, it is hereby ordered that:

1. TRIAL DATE

a. Jury trial is rescheduled from 1/22/13 to **5/20/13 at 8:30 a.m. to 2:00 p.m.** in Courtroom 5, 17th Floor, 450 Golden Gate Avenue, San Francisco, California.

b. The length of trial is expected to last not more than **ten (10) court days.**

2. DISCOVERY

Both sides will comply with the Federal Rules of Criminal Procedure and Criminal Local Rule 16-1. The United States will comply with *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972) and *United States v. Agurs*, 427 U.S. 97 (1976).

3. MOTIONS

a. Defendant's motion to suppress was heard on 10/6/11. The Court denied Defendant's motion.

1 b. Pretrial motions (including motions *in limine*) shall be noticed and set for
2 hearing on **4/16/13 at 2:30 p.m.** The briefing schedule for all motions other than the motion to
3 suppress shall comply with Criminal Local Rule 47-2.

4 c. Criminal Local Rule 16-1(c) disclosure shall be made no later than **3/5/13.**

5 4. PRETRIAL CONFERENCE

6 a. A pretrial conference will be held on **4/16/13 at 2:30 p.m.** The attorneys
7 who will try the case shall attend the conference and be prepared to discuss the matters set forth in
8 Criminal Local Rule 17.1-1.

9 b. Not less than two (2) weeks before the Pretrial Conference, the parties shall,
10 consistent with defendant's right to an effective defense, complete the following:

11 (1) Serve and file a pretrial statement pursuant to Crim. L.R. 17.1-1(b).

12 (2) Serve and file a trial brief setting forth the following:

13 (a) A description of each offense charged in the case.

14 (b) A description of all of the relevant facts upon which the parties
15 stipulate.

16 (c) A brief description of the law applicable to each alleged
17 offense, including, but not limited to, a listing of the elements
18 of each alleged offense and affirmative defense and any
19 instructions that the Court should consider in reaching a
20 decision in the case.

21 (d) Points of law on any other issues relevant to the trial, including
22 all foreseeable procedural and evidentiary issues.

23 (3) Serve and file a joint exhibit list in tabular form, with (a) a column that
24 briefly describes the exhibit; (b) a column that describes for what
25 purpose the party will offer the exhibit and identifies its sponsoring
26 witness; (c) a column that states any objections to the exhibit; (d) a
27 column that briefly responds to the objections; and (e) a blank column
28 for the Court's use. Before this list is filed with the Court, the parties

1 shall meet and confer, in person, to consider exhibit numbers, to
2 eliminate duplicate exhibits and confusion over exhibits, and to make
3 a good faith effort to stipulate to admissibility. If stipulation is not
4 possible, the parties shall make every effort to stipulate to authenticity
5 and foundation absent a legitimate (not tactical) objection.

6 (4) Serve and file a list of the witnesses that each party intends to call at
7 the trial in its case-in-chief, not including rebuttal witnesses, briefly
8 setting forth for each witness the substance of their testimony.

9 (5) Exchange exhibits, which shall be pre-marked (plaintiff shall use
10 numbers; defendant shall use non-duplicative consecutive numbers as
11 agreed in advance) and tabbed.

12 (6) Deliver two (2) binders of all pre-marked exhibits to chambers
13 (exhibits are not to be filed). *Exhibits must be premarked. In*
14 *addition, one set of exhibits must be tagged.* Exhibits shall be three-
15 hole punched and shall be submitted in binders. Sample tags are
16 attached as Exhibit A hereto.

17 (7) Serve and file proposed jury instructions on all substantive issues and
18 on any procedural issue not adequately covered by the Court's
19 standard instructions (i.e. the Ninth Circuit Manual of Model Criminal
20 Jury Instructions (2003 ed. as amended through 2006) (also available
21 on the Ninth Circuit website at www.ce9.uscourts.gov) shall be given
22 absent objection: 1.1-1.12, 2.1-2.2, 3.1-3.2, 3.5-3.9, 7.1-7.6.

23 (a) Any instruction contained in the Ninth Circuit Model
24 Instructions Manual may be requested by designation of its
25 number.

26 (b) Each other instruction shall be requested by setting forth the
27 instruction in full text on a separate sheet with reference to
28 supporting legal authority.

(c) Prior to filing the proposed instructions, the parties shall meet and confer and work in good faith towards a stipulated set of instructions. If a full agreement is not reached, the parties shall enumerate the instructions on which an agreement is reached and then list separately the additional instructions proposed by each party.

(8) Serve and lodge a proposed form of verdict and proposed questions for jury voir dire. Voir dire questions not agreed to shall be listed separately.

c. Not less than one (1) week prior to the Pretrial Conference, the parties shall:

(1) Serve and file any formal objections to the opposing party's witnesses. As to objections to exhibits on the exhibit list, the objecting party shall set forth a detailed basis for each objection. Failure to do so shall be deemed a waiver.

d. No party shall be permitted to call any witness or offer any exhibit in their case in chief that is not disclosed pursuant to this Pretrial Order, without leave of Court for good cause shown, consistent with defendant's right to an effective defense.

e. All motions *in limine* shall be noticed in accordance with Criminal Local Rule 47-2 and heard at the Pretrial Conference.

5. CHALLENGES

The procedure for exercising peremptory challenges in Criminal Local Rules 24-2 and 24-3 will be observed absent objection by the parties.

6. COPIES

Each document filed or lodged with the Court must be accompanied by a copy for use in the Judge's chambers.

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1 7. CHANGE OF PLEA

2 Counsel shall give prompt notice to the United States Attorney and to the Court of
3 any intention to change a previously entered not guilty plea. A written plea agreement must be
4 submitted at least one (1) day in advance of the plea.

5 8. Jury instructions, proposed form of verdict, and requested voir dire shall also be
6 submitted to Chambers in Word or WordPerfect format on a floppy disk.

7 Dated: October 17, 2012



8
9 EDWARD M. CHEN
United States District Judge

JUROR QUESTIONNAIRE

- 1
- 2 1. Name.
- 3 2. City of residence.
- 4 3. Occupational status.
- 5 4. Organizations.
- 6 5. Hobbies.
- 7 6. Marital status.
- 8 7. Spouse's occupation.
- 9 8. Children (including ages).
- 10 9. If a juror on another case.
- 11 10. If ever a grand juror.
- 12 11. If ever in the military.

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case Number:

PLTF / DEFT EXHIBIT NO. _____

Date Admitted: _____

By: _____

Betty Lee, Deputy Clerk

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